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28 Attorney for Defendant
29 Windsor Gardens Care Center of Hayward,
30 Erroneously sued as "Windsor-Gardens"
31

32 UNITED STATES DISTRICT COURT
33 NORTHERN DISTRICT OF CALIFORNIA

34 MERRY KALAFATICH,) CASE NO. CV 10 2030 SI
35) STIPULATION AND ORDER
36 Plaintiff,) FOR DISMISSAL WITH
37) PREJUDICE PURSUANT
38 V.) TO FRCP 41(A)(1)
39)
40 BENEFIT & RISK MANAGEMENT)
41 SERVICES, INC., TERRY BOYLE,)
42 WINDSOR GARDENS AND DOES 1-50)
43 INCLUSIVE)
44)
45 Defendants,)
46)
47)

48 STIPULATION AND ORDER FOR DISMISSAL FRCP 41(A)(1)

1 IT IS HEREBY STIPULATED by the parties to this action,
2 through their designated counsel, that the above-captioned action
3 be dismissed in its entirety with prejudice pursuant to FRCP 41
4 (a)(1), each party to bear its own fees and costs. The dismissal
5 of this action with prejudice shall not preclude Plaintiff Merry
6 Kalfatich from asserting as an affirmative defense in any
7 collection action brought by Windsor Gardens, its successors or
8 assigns for recovery of hospitalization fees from Plaintiff that
9 Windsor Gardens by its agents represented to and agreed with
10 Plaintiff that all fees for her hospitalization were to be paid by
11 Plaintiff Merry Kalfatich's health care benefit provider and did
12 enter an express agreement with the health care benefit provider
13 for payment of Merry Kalfatich's hospitalization at Windsor.

14 In the event of the assertion of the aforesaid affirmative
15 defense Windsor Gardens shall not assert or contend the same is
16 barred by the doctrine of res judicata or collateral estoppel

17 Dated: June 28, 2010 FRANK E. MAYO, ESQ.

18

19 /S/ Frank E. Mayo
20 Attorney for
Plaintiff Merry Kalfatich

21 Dated: June , 2010 THE DAVIS LAW FIRM, APC

22

23 BY: /S/ Timothy C. Davis, Esq.
Timothy C. Davis, Esq.

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Dated: June , 2010 LAW OFFICE OF CHARLES P. TEIXEIRA

25

26 BY:/S/ Charles P. Teixeira
Charles P. Teixeira

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28 ATTORNEYS FOR BENEFIT & RISK
MANAGEMENT SERVICES, INC. and

STIPULATION AND ORDER FOR DISMISSAL FRCP 41(A)(1)²

1 TERRY BOYLE

2 Dated: June , 2010 DE CASTRO LAW GROUP, P.C.

3 /S/ Jose-Manuel A. de Castro
4 Jose-Manuel A. de Castro
5 Attorney for Windsor Gardens Care
Center of Hayward,
6 Erroneously sued as "Windsor Gardens"

7 IT IS SO ORDERED:

8 
9 JUDGE OF THE US DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA